THE PUBLIC DEFENDER

(Report of the Committee of the Institute)

REGINALD HEBER SMITH,[1] Chairman

The Public Defender Committee of the American Institute of Criminal Law and Criminology desires to submit this brief report summarizing its activities during the past year.

The members of the committee have maintained a close interest in all developments touching this subject and have kept in touch with each other through correspondence. During the year there have been no significant accomplishments. The nation has only recently begun to turn its attention back to domestic problems. In this field, as in the allied field of legal aid, a general quiet has prevailed. It is perfectly apparent, however, that the public defender and similar problems connected with the administration of justice are beginning again to claim the attention of the community so that we look forward to interesting activities during the next year.

The committee has deemed it wise on the whole to mark time rather than to undertake any new projects. We have, however, by no means been inactive. Mr. Rubin has been one of the leading spirits in the strong campaign for the establishment of the office of public defender in Baltimore. Mr. Goldman has continued to keep up to date his remarkably complete file of information concerning the whole movement. Mr. Spaulding has undertaken to supply accurate information concerning the necessity of the public defender's work to the Massachusetts Judicature Commission which is now in session considering what betterments may be made in the Massachusetts system of judicature and to which were referred the two public defender bills filed during the last session of the legislature. Mr. Reynolds, while in the West, devoted time to a detailed study of the workings of the police court public defender in Los Angeles. Your chairman has begun a

[1]The personnel of the committee is as follows:
Reginald Heber Smith, of the Boston Bar, chairman.
Walter J. Wood, Los Angeles, Cal.
Robert O. Harris, Boston, Mass.
Lindley Spender, Baltimore, Md.
James Bronson Reynolds, North Haven, Conn.
Mayer Goldman, New York City.
Charles Edwin Fox, Philadelphia.
Warren F. Spalding, Boston, Mass.

study of the public defender plan as it operates in Connecticut and has conferred with a special committee of the Connecticut State Bar Association which has jurisdiction over this subject and with some of the attorneys who are the county public defenders.

I hope by next year to be able to make a detailed report on this Connecticut plan. It embraces a feature which I am inclined to feel may well prove itself superior to any other plan now in existence, and that is that in Connecticut the public defenders are appointed by the judges of the Superior Court.

This affords a precedent of great importance. If I may be permitted to express a personal opinion, it would be that the public defender movement in this country has struck a snag and is being retarded, not because of any inherent fault, but because it is misunderstood. Excellent men are all at sea in their minds about it. Progress will come more swiftly if we reappraise the whole situation and lay more emphasis on the fundamentals. If we can state these clearly we will disabuse many men out of their present notions and convert them into allies instead of opponents.

These fundamentals, simply stated, are that under our existing system of doing justice the lawyer is essential. A trial court cannot properly function without lawyers. Many persons who are indicted for serious offences must stand trial but they are unable, because of poverty, to emply counsel. In many states that means they will not be represented at all; in others it means they will be represented by assigned counsel. We feel sure from experience that the system of assigned counsel is bad; that it is unfair to the bar, and unfair to the prisoner because the system tends to degenerate to the point where assignments are made to lawyers in whom we have no confidence. We claim therefore that the courts cannot be expected to work out impartial justice unless both sides to the case have adequate representation and that as the existing system fails to guarantee that the defendant, if he be poor, shall have adequate representation, a new agency, which we call the public defender, is necessary to supply the services of lawyers to the poor in criminal cases, thereby supplanting our present legal machinery in an assential particular.

Up to this point most lawyers agree with us. Here, however, a divergence of opinion begins. Some insist that while this work is essential it should be left in private hands, as is the case with the Voluntary Defenders Committee in New York. Because of local political conditions in various cities this attitude may be entirely justified. Instead of arguing about whether the defender should be publicly or privately

supported we might for the time being be content with the establishment of any organization which does its work well. Any one who studies the condition in New York can see that a great many lawyers look with disfavor on the public defender idea because of the adverse reports of the City and County Bar Associations. And by reading these reports one can see at once that what weighed most heavily in the committee's opinion was the danger of creating a new political office.

By a shift of emphasis I am convinced that we can avoid further imbroglios of this sort. The more constructive line of approach seems to me to be this: the function of supplying counsel to poor persons in order that justice may be done is a public function. Both the legal aid work and the defender's work must ultimately pass under public control. Inasmuch as their function is to play a part in the administration of justice as distinguished from an executive or governmental function when they pass under public control that control should be vested in the courts. The defender's work, in other words, ought finally to be incorporated into the administration of justice and towards that goal we ought to shape our plans.

This conception fits into the general theory that the surest way to make progress in reforming our judicial institutions is by entrusting the judges with wide powers over procedure and organization of courts. We have given this power to the industrial accident commissions and when it became clear that injured workmen needed legal and other assistance for which they could not pay we authorized the commission to appoint and control inspectors who aid in preparing the facts and advise on the routine matters of law and also impartial physicians. When it became apparent that some supplemental machinery was necessary if deserted wives were to have adequate protection we created the probation department of the domestic relations court and allowed judges to appoint probation officers.

The logic of the situation therefore would seem to be that the judges ought to appoint the public defenders, and remove them at pleasure, as a part of their responsibility in making the judicial machine operate properly. There is good reason why the people should elect the prosecuting attorney because he is their counsel, they are his clients, and they ought to choose h'm just as an individual client chooses his attorney. This argument does not apply to the defender.

As an indication of the fact that progress can be made by stating our case somewhat in this fashion, I can cite one illustration. Last winter I conferred with the Legislative Committee of the Citizens' Union of New York on the pending public defender legislation. There

were excellent men on this committee; they were all opposed to the public defender because the bill provided that he should be chosen by popular election. When it was suggested that the defender could be appointed by the judges of the Supreme Court most of the opposition disappeared.

This idea of judicial appointment finds further endorsement in the amendment which the Pennsylvania Constitutional Commission has adopted giving the Supreme Court power to regulate procedure and to regulate and control all legal aid work in the state.

The Connecticut plan represents the accomplishment of this idea. A preliminary study indicates that it is eminently successful. The plan seems to inspire the bar with confidence. The judges have appointed excellent trial lawyers as the public defenders. A further and more detailed study of this system ought to be made.

It is perhaps not too much to say that we expect the next year to witness marked progress in this whole field. The committee desires to continue its studies and therefore asks that it may be appointed for another year.

I take pleasure in submitting a supplemental report which has been prepared by Mayer C. Goldman, Esq.

(This will be published in our next number.—EDS.)

MEETING OF THE AMERICAN PRISON ASSOCIATION

F. EMORY LYON

The semi-centennial session of the American Prison Congress, held in Columbus, Ohio, October 14-19, was an important landmark in the progress of penal science.

To anyone who has listened to the discussions of the Congress for a period of years the change in the spirit and import of the papers presented is most marked. That reformation rather than retaliation is the true purpose of imprisonment is taken for granted. To this end it was suggested that the Standing Committee on Prison Discipline should more properly be a Committee on Prison Training. The modern prison, in other words, should enlarge its functions from the mere custody of a class to the careful study, classification, treatment, and education of individual inmates in accordance with their physical condition and mental responsibility.